

**REMARKS:**

In the Office Action dated June 3, 2008, claims 29-32, 38 and 39, in the above-identified U.S. patent application were rejected. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 29-32 and 38-39 remain in this application, claims 33-37 have been canceled and new claim 40 has been added to the application.

Claims 29-32 were rejected under 35 USC §103(a) as obvious over Anderson, Lo and Benoff. Claim 29 has been amended to be directed to a method for the preemergence control of undesirable plant species while reducing crop damage due to the application of dinitroaniline compounds. Anderson et al (US 5,665,674) teaches the use of auxin transport inhibitors as potentiators for any type of herbicide (col. 2, line 22-26). In contrast to Anderson, the purpose of the present invention is to reduce crop damage caused by dinitroaniline formulations (paragraph [003]), Accordingly, Examples 1-9 in the present application clearly demonstrate that the formulations according to the invention caused less damage to alfalfa, lettuce, tomatoes or corn compared to known dinitroaniline formulations (i.e. non-microencapsulated formulations).

Lo and Benoff are cited for the disclosure of microencapsulation processes. Applicants contend that a person skilled in the art who combines the teachings of Lo and Benoff with the teaching of Anderson et al, will end up with a microcapsule formulation which must comprise auxin transport inhibitors. According to Anderson dinitroanilines are classified as growth inhibitors (col.3, 1.32) and dicamba as growth regulator (col. 2, line 61). Thus, neither of these compounds are classified as auxin transport inhibitors (col. 2,

line 59). One skilled in the art would not modify Anderson in view of Lo and Benoff to remove the auxin transport inhibitor since Anderson teaches that the auxin transport inhibitor is essential to his invention. In addition, one skilled in the art would not look to Anderson, Lo and Benoff to find a way to reduce crop damage caused by dinitroanilines as none of these references suggest methods for reducing crop damage. A person skilled in the art accidentally combining the teachings of Anderson, Lo and Benoff would end up with a different invention than the invention of claims 29-32. In view of the above amendments and discussion, applicants request that this rejection be withdrawn.

Claim 39 was rejected under 35 USC §112, first paragraph, as lacking an adequate written description. Claim 39 has been amended to clarify that the microcapsules reduce crop damage due to the dinitroaniline compound. In view of the deletion of the language "median diameter sufficient to reduce crop damage", applicants request that this rejection be withdrawn.

Claim 39 was rejected under 35 USC §112, second paragraph, as indefinite due to the language "median diameter sufficient to reduce crop damage". This language has been deleted from claim 39. In view of the above amendments, applicants request that this rejection be withdrawn.

Claim 38 was rejected under 35 USC §102(b) as anticipated by Benoff. The office action contends that Benoff indicates that microcapsules prevent undesired staining of non-target areas and that dinitroaniline compounds cause undesirable staining. The office action concludes that Benoff discloses a method of safening a desirable crop from the effects of a dinitroaniline compound applied to control undesirable plants. Applicants

respectfully point out that this interpretation is incorrect. Benoff states at column 5, lines 38-45 that:

One of the problems associated with the application of certain herbicidal compositions is that staining of non-target areas may occur. Staining is particularly troublesome when certain lawn and turf herbicidal formulations are applied because **certain non-target areas such as vinyl siding and concrete are easily stained**. In particular, certain dinitroaniline herbicides such as pendimethalin have caused undesirable staining. (emphasis added)

Clearly, Benoff was addressing the undesirable staining of non-plant materials. Benoff does not suggest or disclose that desired crops will be stained or otherwise damaged by dinitroaniline herbicides. Therefore, Benoff does not suggest or disclose a method of safening a desirable crop from the effects of a dinitroaniline compound applied to control undesirable plants. In view of the above discussion, applicants request that this rejection be withdrawn.

Claims 29-32 and 39 were rejected under 35 USC §103(a) as unpatentable over Anderson in view of Benoff. Anderson at al (US 5,665,674) teaches the use of auxin transport inhibitors as potentiators for any type of herbicide (col. 2, line 22-26) but as indicated on page 11 of the office action, Anderson does not suggest or disclose a method for reducing crop damage due to dinitroaniline compounds. Benoff does not cure this deficiency as Benoff does not suggest or disclose a method of safening a desirable crop from the effects of a dinitroaniline compound applied to control undesirable plants either. Though the office action contends that Benoff suggests that microcapsule formulations reduce or eliminate the phytotoxic effects caused by dinitroaniline compounds, applicants disagree. Benoff teaches that microcapsulation reduces or eliminates staining of non-

target areas such as vinyl siding and concrete. Benoff does not suggest that dinitroanilines stain desired plants. Therefore, contrary to statements made in the office action, Benoff does not indicate that microcapsule formulations reduce phytotoxicity caused by dinitroanilines. Benoff does not even suggest that dinitroanilines can cause crop damage. Since neither Anderson nor Benoff individually or in combination suggest that a microcapsule formulation can be used to reduce crop damage due to the dinitroaniline compounds, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 29-32 and 38-40 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By



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